

1 (D) REMARKS, DRAWING AMENDMENTS

2
3 The Broerman reference is overcome by the Declaration and Supplemental Declaration of the
4 present inventor. Withdrawal of the reference is respectfully requested.

5
6 In order to further movement of this application to allowance, the applicant *arguendo* considers
7 the moot issue as to whether U.S. Pat. No. 6,594,633 (Broerman) anticipates all the claims the
8 present application under Sec. 102 (e) . Broerman was filed July 7, 1999. The present
9 application, filed April 11, 2001 (hereinafter "Triola") is based on a priority Provisional
10 Application No. 60/198785 filed April 20, 2000. Thus, the applications were co-pending.

11
12 Sec. 102(e) is in pertinent part:

13 "the invention was described in (1) an application for patent, published under section
14 122(b), by another filed in the United States before the invention by the applicant for
15 patent, or (2) a patent granted on an application for patent by another filed in the United
16 States before the invention by the applicant... ."

17
18 A valid rejection on the ground of anticipation requires the disclosure in a single prior art
19 reference of each element of the claim under consideration. Soundsciber Corp. v. U.S., 148
20 USPQ 298, 301 (1966); In re Donohue, 226 USPQ 619, 621 (Fed. Cir. 1985). Emphasis added.

21
22 Broerman does not disclose the present invention. Broerman is similar in scope to the
23 previously cited reference to the Ravais series of applications in that it is a *buyer-seller centric*
24 method and apparatus¹. In his own words, Broerman states:

25 "The typical seller is unfamiliar with *the marketing* required to sell their property...(col. 1,
26 ll.13, 14) * **Typical buyers are at a similar disadvantage *in finding and purchasing real*
27 *property*...(col. 1, line 29)***Attempting to avoid the high commission of real estate agents*
28 *means difficulty* in negotiating the purchase contract.... (col. 1, ll. 60-61.)****...to reduce or*
29 *eliminate the need for a seller 12 and a buyer 13 to work through real estate agents...an agent*
30 *may be used*...(col. 4, ll. 14-18)***...a brokerage system 22*...(col. 4, line 6 and

¹ In fact, based on the near identical nature of Ravais and Broerman, one must wonder why an interference was not declared and why neither is even cited against the other.

1 throughout)...***The closing actions routine 208 referenced in the main routine 200 of FIG. 6 is
2 shown in FIG. 10 as a flowchart *sequence of operations performed by the seller 12, the buyer*
3 *13 and the real estate computer network 10...*(col. 15, ll. 40 -44)*** " Emphases added.

4
5 Broerman summarizes his invention as:

6 "...automated and efficient provision of real estate services, particularly in the area of
7 facilitating real estate *sales* transactions." Col. 2, ll. 12-14. Emphasis added.

8
9 Nowhere in the chain cite references to Broerman used by the Examiner nor anywhere else in
10 Broerman is there a teaching on processes which are *escrow office - officer centric*. This is
11 most simply demonstrated by Broerman FIG. 9. This FIG. 9 is clearly distinguished by;
12 Broerman's own words:

13 "...a flowchart...to *negotiate sale* of a property...." Emphasis added.

14
15 Applicant incorporates herein by reference all of his previous Remarks and Exhibits in response
16 to previous Office Actions in which applicant explains at length the difference between buy-sell
17 contract negotiations and escrow processes thereafter. They are not the same process.
18 Applicant specification describes such escrow company centric processes and has claims, as
19 amended, directed thereto.

20
21 Nowhere does Broerman disclose as in applicant's independent claim 4:

22 "A Web-based client-server computer system for escrow office related processes of real
23 estate title transfer, comprising: ***"

24
25 Nowhere does Broerman disclose as in applicant's independent claim 11:

26 "Computerized, on-line method for real estate escrow processes performed by an
27 escrow company holding an escrow account ~~[[transactions transfer]]~~, the method
28 comprising:

29 ***"

1 Nowhere does Broerman disclose as in applicant's independent claim 14:

2 "A computerized process for a computerized on-line real estate escrow ~~[[transaction]]~~
3 office account, the process comprising:
4 providing escrow account data and electronic documents, escrow status, broker status,
5 lender status, buyer status, seller status, and vendor status via a centralized server associated
6 with an escrow officer; and
7 connecting parties to said computerized on-line real estate escrow ~~[[transaction]]~~ office
8 account using multiple computer network access devices via connectivity types which include
9 but are not limited to wireless, satellite, dial-up, or leased communications."

10
11 Nowhere does Broerman disclose as in applicant's independent claim 15:

12 "A system for real-time or near-real-time real estate escrow ~~[[transactions]]~~ company
13 account processes~~[[, procedures]]~~ and documentation, the system comprising:"
14 which is followed by a litany of individual processes which Broerman never considers.

15
16 Nowhere does Broerman disclose as in applicant's independent claim 16;

17 "A method of doing business in realty using on-line communications, the method
18 comprising:
19 providing an on-line escrow account for parties to a transaction;
20 providing on-line transactional account management services with respect to the on-line
21 escrow account for said parties; and
22 providing secure access to said on-line escrow account limited to the parties and third
23 parties using on-line identification authentication."

24
25
26 Nowhere does Broerman disclose as in applicant's independent claim 17:

27 "A computer memory having a program for real estate escrow ~~[[transactions]]~~ company
28 accounts comprising:
29 program code providing a client-server based automation system for said real estate
30 escrow ~~[[transactions]]~~ company accounts;
31 program code providing implementation, management, tracking, electronic
32 documentation, and closing of specific escrow ~~[[transactions]]~~ company accounts; and

1 program code allowing escrow ~~[[transaction]]~~ data access only for specific parties to said
2 escrow ~~[[transactions]]~~ company accounts."

3
4 Nowhere does Broerman disclose as in applicant's independent claim 21:

5 "A computer based automation system for escrow processes and documentation using
6 Internet computing technology, said system comprising:

7 means for implementing, managing, and tracking real estate transfer and real estate
8 financing processes by and among principal parties and their agents with respect to an escrow
9 company account requiring said processes and documentation; and

10 means for providing data and documents associated with said implementing, managing,
11 and tracking such that said data and documents are accessible to said principal parties thereto
12 and their agents and officers of said escrow company account via Internet."

13
14 Looking again to Broerman FIG. 9 and comparing applicant's independent claim language, even
15 with a tortuous fit of this reference, argued here only for sake of clarity, substantially all of
16 Triola's invention as claimed would fall e.g. within the line **between Broerman element 370**
17 **ARRANGE ESCROW DEPOSIT** and **element 372 NOTIFY SELLER**, or e.g. the line **between**
18 **Broerman element 340 ESCROW REQUIRED** and **342 ARRANGE ESCROW DEPOSIT**, or
19 perhaps e.g., even within the line after box 342. *There is no actual correlation because*
20 *Broerman never considered real estate escrow companies nor what services they perform in a*
21 *title transfer.* In any event, the elements at each end of these lines by definition still must be
22 taken by the buyer or seller or their agents. Again, this is evidence of Broerman's approaching
23 a problem from the viewpoint of a buyer or seller, not from the viewpoint of an escrow company
24 or an escrow officer. As further evidence of this fact, applicant offers EXHIBIT 1 hereto. It
25 should also be noted that inventor/assignee Broerman is a resident of Ohio. As demonstrated
26 by the attached EXHIBIT NO. 1, Escrow Procedures and Typical Closing Cost Splits, the state
27 of Ohio does not use escrow companies. See page 6 of 8. It is logical to presume that
28 Broerman therefore had no knowledge of such entities or of the duties and obligations and
29 services of an escrow company. See e.g., to the contrary, Alaska, California, Hawaii, Idaho,
30 Kansas, Montana, New Mexico, Oregon, and Washington, where escrow companies are
31 specifically mentioned.

1 Any other interpretation of Broerman is an extrapolation toward inherency. In In re Newell, 13
2 USPQ2d 1248, 891 F.2d 899 (Fed. Cir. 1989) the court explicitly stated that:

3 "[A] retrospective view of *inherency* is not a substitute for some teaching or suggestion
4 which supports the selection and use of the various elements in the particular claimed
5 combination." (At 1250, emphasis added.)
6

7 In fact, the only reference to an "escrow account" is in Broerman col. 14, starting at line 59:

8 "Then, a determination is made as to whether earnest money was included in the offer
9 that should be place in an escrow account or other otherwise [sic] retained (block 340)."
10 and likewise at col. 15, starting at 22-25:

11 "...then a determination is made as to whether additional earnest money is required
12 (block 368). If so, the escrow deposit is arranged (block 370).
13

14 Note that this is in the future tense. This can only be interpreted at best as "step one", viz.,
15 where *the buyer and seller attempting to do without real estate buy-sell agent assistance* are
16 merely agreeing to open an escrow account. But even this again is extrapolation. There is no
17 mention, much less teaching an enabling embodiment, within Broerman for all of the processes
18 conducted by an escrow officer at an escrow company as taught and claimed by Triola.
19

20 Note also from Broerman FIG. 3, that Broerman's facilitator 24 one and only connection line to
21 the process is to the purchase contract element 98. As explained in depth by Triola in response
22 to previous Office Actions and incorporated herein by reference, there is a myriad of processes
23 and parties involved in a true escrow centric system as claimed by Triola. A completed
24 purchase contract is *the prerequisite* to a real estate escrow conducted by a qualified escrow
25 company.
26

27 Broerman's claim 1 as particularity cited by the Examiner states in column 18:

28 "A method of *brokering* a real estate transaction...
29 concurrently maintaining separate private interactive communications between the buyer
30 party and one of a seller and a seller's agent from the seller party, and between the
31 seller and the seller's agent, which *conducting negotiations for the purchase contract*."

1 This is unequivocally a *pre-escrow* situation. In fact the only claims which mention anyone
2 other than a buyer, seller or their agents is claim 6 (col. 18), and claim 32 (col. 20) which limit
3 the selection of others able to receive the electronic document (verifying the single connection
4 of FIG. 3 described above) is " ...an attorney, a mortgage provider and a title provider." No
5 escrow company nor escrow officer/agent was ever mentioned by Broerman.

6
7 Again as with the Ravais references cited previously, the Office Action latches onto a few
8 similar terms used by Broerman - - e.g., "escrow," "closing," "facilitator," "title provider" - -
9 without regard to the true function thereof as described and understood in Broerman's own
10 words, and alleges anticipation. While using some similar language as the present application,
11 a careful reading of Broerman finds only *pre-escrow*, *post-escrow*, *buyer/seller/agent-centered*
12 concepts.

13
14 Applicant has shown the immateriality of Broerman to the Triola claims. It is respectfully
15 requested that the rejection be withdrawn. Applicant specifically reserves the right to argue
16 each paragraph of the present Action on a point-by-point basis in support of any continuing
17 procedures at the USPTO should the reference not be withdrawn.

18 19 Non-Technical Considerations

20
21 As mentioned above, Triola and Broerman, and for that matter previously cited Ravais, are all
22 based on co-pending patent applications. Neither application was published under 37 C.F.R.
23 1.119. Triola is under a granted Petition to Make Special. The applicant's obvious concern is
24 that had he not had to fight over now-retracted references proven to be totally immaterial
25 teachings on ATM machines (Martin) and buyer-seller centric systems (Ravais and Broerman),
26 and to have had to file an RCE because of such immaterial references, that applicant's case
27 would likely have been granted prior to these co-pending references. Perhaps, again merely
28 arguendo, Triola, published Nov. 29, 2001, should have instead been cited against Broerman,
29 issued Jul. 15, 2003, and Raveis, Jr. 09/974,002.

30
31 Furthermore, it is noted here for the record that the Action makes no allegations other than to
32 paraphrase each of applicant's claims and to append a chain-cite of mere references parts of

1 Broerman. No explanation, no argumentative reasoning, of how Broerman's language or
2 drawings is so applicable is offered at all. In other words, applicant is left to speculate as to
3 fitting the parts together with applicant's claims. This format for rejection is *prima facie* hindsight
4 reasoning *using the invention* for which a patent is sought as a *template*. This is impermissible.
5 Texas Instruments, Inc. v. ITC, 26 USPQ2d 1018 (CA FC 1993).

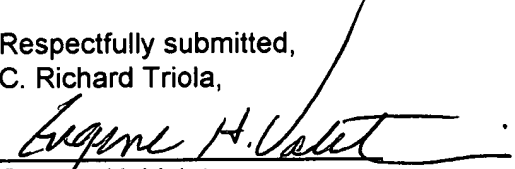
6
7 Conclusion

8
9 Based upon the foregoing, it is submitted that the application now presents claims which are
10 directed to novel, unobvious and distinct features of the present invention which are an
11 advancement to the state of the art. Reconsideration and allowance of all claims is respectfully
12 requested. The right is expressly reserved to reassert any and all arguments, including the
13 raising of new arguments, and the filing of appropriate continuing procedures at the USPTO,
14 should a Notice of Allowance not be forthcoming.

15
16 Questions or suggestions that will advance the case to allowance may be directed to the
17 undersigned by teleconference at the Examiner's convenience.

18 Date: APRIL 22, 2004

19 Respectfully submitted,
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